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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,367	04/12/2004	Fred Sterzer	MMTC 04-1	3072

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EXAMINER

ROLLINS, ROSILAND STACIE

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 06/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,367

Applicant(s)

STERZER ET AL.

Examiner

Rosiland S. Rollins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Truckai et al. (US 6813520). In figures 2 and 3, Truckai et al. disclose a balloon catheter comprising a catheter body an inflatable balloon surrounding the catheter body and an external antenna (14) situated outside of the balloon in a cooperative relationship with the external surface of the balloon.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kasevich et al. (US 5057106) further in view of Truckai et al. '520. Kasevich et al.

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disclose a balloon catheter comprising a catheter body (1), an inflatable balloon (12) surrounding the catheter body and an external antenna (figure 4) situated outside of the balloon (col. 5 line 37). Kasevich et al. teach all of the limitations of the claims except the antenna being in cooperative relationship with the exterior surface of the balloon.

Truckai et al. disclose a similar electrosurgical device and teach that it is old and well known to provide the antenna of the device in cooperative relationship with the exterior surface of the balloon to control the depth of power supplied to the tissue being treated.

Claims 11, 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kasevich et al. in view of Truckai et al. and further in view of Sterzer et al. (US 5688050). Kasevich et al. and Truckai et al. combined teach all of the limitations of the claims except a radiometer and a single-pole two position switch. Sterzer et al. disclose a similar device and teach that it is old and well known to include a radiometer and a single-pole two-position switch to provide a means for measuring the temperature of the patient to facilitate effective treatment. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a radiometer and a single-pole two-position switch with the Kasevich et al. particularly in view of the teaching of Sterzer et al.

Response to Arguments

Applicant's arguments filed 11/18/05 have been fully considered but they are not persuasive. Applicant argues that Truckai et al. neither shows or suggests any type of

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antenna structure and that elements (14) in Truckai et al. are stated by them to be "electrodes" and not an "antenna". Applicant also defines an antenna as "a structure having a particular shape and size designed for radiating electromagnetic waves of a frequency within a particular frequency band in response to the antenna being energized by this frequency within this particular frequency band". Webster's II New Riverside University Dictionary, however, defines an antenna as a metallic device for transmitting and receiving electromagnetic waves. According to the definition provided by Webster's Dictionary, the "electrodes" of Truckai et al. are in fact antennas.

Applicant argues that Kasevich et al. makes it clear that they want to avoid any ablation of tissue and therefore, Kasevich et al. can not be combined with Truckai et al. The tissue referred to by the Applicant is not the target tissue. It is the tissue surrounding the plaque, which is the target tissue. In column 5 lines 59-68 Kasevich et al. clearly recites heating the plaque to temperatures greater than 100°C and particularly within the range of 400-500°C. These temperature ranges overlap the temperature known in the art required to ablate tissue. Therefore, the teaching of Truckai et al. is not antithetical to Kasevich et al.'s intent.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not


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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S. Rollins whose telephone number is (571) 272-4772. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Rosiland S Rollins
Primary Examiner
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